MICHIGAN SUPREME COURT

PUBLIC HEARING
May 16, 2007

CHIEF JUSTICE TAYLOR: Good morning. We're here today for the public hearing and public comment. The ground rules are that the commenters have three minutes. There's a short period of time in the middle – from the beginning of your three minute period where there'll be no questions from the Court. The first item is 2004-08 – the pro hac vice rule. Victoria Kremski.

ITEM #1 – 2004-08 – Pro Hac Vice Rule

MS. KREMSKI: Good morning, thank you, Victoria Kremski appearing on behalf of the Bar. The pro hac vice rule that you have in front of you is not a new concept. Pro hac vice rules are (inaudible) in all of the states. This is simply the delineation of a thorough and clear process for pro hac vice admission. The impetus of this rule – there are two primary impetuses for the rule. The first is a need for a consistent and clear process, and it's driven by the reality that clients don't recognize geographical borders any more. People live in different states. Increasingly commerce is multi-state in nature. This rule would facilitate the ability of clients to use counsel of their choice. It's also commerce friendly especially for businesses that have in-house counsel; that have legal matters in many states. The current lack of a uniform process for pro hac vice admission in administration among the states makes it difficult for attorneys and clients. At the Bar we receive several calls a month asking about pro hac vice admission process, and people are spending a lot of time trying to determine that. The second primary impetus is for public protection. Right now in Michigan, as in other states, there's no centralized record keeping. Pro hac vice admission is occurring and it's completely unregulated. We don't have an idea of the scope and the nature of – I'm sorry, the scope and the extent of pro hac vice admission in Michigan.

CHIEF JUSTICE TAYLOR: Ms. Kremski do other states have rules of this sort?

MS. KREMSKI: Every state has rules your honor. They vary. There are – this is – The proposed rule in front of you is based on the ABA Model Rule, and there are about five to six states that have adopted rules consistent with the ABA Model Rule.

JUSTICE YOUNG: Does the ABA Model Rule impose upon the moving attorney the continuing ethical obligation to the client?

MS. KREMSKI: It doesn't create any new obligations --

JUSTICE YOUNG: Well, let me just ask the question. What is the difference in the ethical obligation of moving a new attorney for admission to the State Bar of Michigan, and an attorney moving pro hac vice to (inaudible)?

MS. KREMSKI: Well, my understanding – it's been a long time since I was first admitted. My understanding is that the moving attorney for a brand new attorney simply attests to the character and fitness -

JUSTICE YOUNG: Right.

MS. KREMSKI: of the attorney.

JUSTICE YOUNG: Right. And my question is why is there a difference?

MS. KREMSKI: The difference here --

JUSTICE YOUNG: The rule here is proposing that if I move a foreign attorney for admission in a particular matter, I am ethically responsible for that attorney's conduct in the case.

MS. KREMSKI: You're not necessarily ethically responsible, but you are – you have an independent duty to – not to the attorney, but to the client.

JUSTICE YOUNG: Well, we're not – that's what I understand.

MS. KREMSKI: Okay.

JUSTICE YOUNG: Whether it's to the attorney or to the client, it's always to the client. But why is there a difference? Why should I have – When I move for the formal admission of the person to the Bar, I only have to make a representation to the court about the character and fitness of the attorney to be admitted, but here I have a continuing ethical obligation to the client after moving an otherwise licensed attorney. Why would that be?

MS. KREMSKI: Okay, I'm sorry, I see where you're coming from now. You've identified one of the – which is probably the largest debate in the pro hac vice issue which is the question of whether you should require affiliation. There is

a school of thought out there that says if you really want to make this friendly to the client and facilitate client choice --

JUSTICE YOUNG: I don't want to pay two lawyers as a client.

MS. KREMSKI: You don't want to pay two lawyers – you should have pure pro hac vice. The counterweight to that argument is for public protection, because on rare occasions you have out-of-state attorneys that abandon the litigation and the client is left, if they didn't have a local counsel and somebody to turn to and somebody that the court could turn to, I think – my understanding is that trial court judges like to have a Michigan attorney, or a local attorney, there for in that instance because it protects the client. And many attorneys don't understand that they already have that existing legal or ethical relationship and obligation to the client, and --

JUSTICE YOUNG: Under our current practice?

MS. KREMSKI: Under our current rules --

JUSTICE YOUNG: Where's that spelled out?

MS. KREMSKI: It's – I'm sorry, I misspoke. It's not in the rules it's under case law, and under the --

CHIEF JUSTICE TAYLOR: You mean under the current rules, Ms. Kremski, that if an Ohio lawyer wanders up to me in Monroe circuit court and says would you move my admission on this case that's coming up I'm here pro hac vice, and I say sure and he does, and then he steals the client's money I would be responsible.

MS. KREMSKI: No, you're not vicariously liable for the omissions or acts of your fellow attorney. Your obligation runs to the client. So if he --

JUSTICE CORRIGAN: Ms. Kremski doesn't the proposal the way you've written it that the – I call it the shadow proposal, really moot out the argument you're making right now? The plain language of your proposal contradicts what you're telling Chief Justice Taylor.

MS. KREMSKI: I don't think that --

JUSTICE CORRIGAN: Have you read Marcia Proctor's letter to us?

MS. KREMSKI: No, I haven't.

JUSTICE CORRIGAN: Oh, okay. I would appreciate your review of her letter and perhaps a submission on that.

JUSTICE YOUNG: It appears that you are imposing on the moving attorney the – a parallel obligation as to the foreign attorney for the welfare of the client's affairs in this state.

MS. KREMSKI: That's something that already exists under the existing ethical rules. When you – when an attorney --

JUSTICE YOUNG: Well, then the answer to the Chief Justice's question is if the foreign attorney messes up or ethically fails the client in some way, then the Michigan attorney is responsible.

MS. KREMSKI: Not – in terms of Justice Taylor's example, in terms of stealing the money, that's an intentional act, it's a criminal act, there wouldn't be vicarious liability.

JUSTICE YOUNG: Why?

CHIEF JUSTICE TAYLOR: Why? I'm assuming he – I'm just – I'm not trying to make it hard, I was trying to make it as simple as possible the example. I move the guy's admission, he comes in, he settles his minor's claim or something, they enter a settlement and the lawyer runs off with the money.

MS. KREMSKI: Well, my understanding of that situation is that you're not in the same firm, you don't have --

JUSTICE YOUNG: Right. No, you are forced --

CHIEF JUSTICE TAYLOR: I'm just in the lobby of the circuit court when the guy from Ohio walks up to me and says hey, would you move my admission. I say sure.

MS. KREMSKI: What you are --

CHIEF JUSTICE TAYLOR: I don't know anything about him. I learn his name and I go in and I ask the circuit judge will you admit this guy to practice in this case.

MS. KREMSKI: Which is why we put that specific language in the rule is to put lawyer's on notice that there is that obligation that they're currently not aware of.

CHIEF JUSTICE TAYLOR: Okay, but what is that obligation?

MS. KREMSKI: That obligation goes to the client in the course of a --

CHIEF JUSTICE TAYLOR: And what does it mean tangibly?

MS. KREMSKI: It means tangibly that you have all of the responsibilities that you would normally have any time you enter into an attorney-client relationship.

JUSTICE YOUNG: Well, that includes (inaudible) --

CHIEF JUSTICE TAYLOR: Well, if I enter into an attorney-client relationship and I run off with the minor's money, I think I'm on the hook ethically right?

MS. KREMSKI: You are personally, yes.

CHIEF JUSTICE TAYLOR: Right, okay. Aren't you saying then that that would be the same when I move the Ohio lawyer's admission and he runs off?

MS. KREMSKI: Well, the only thing --

JUSTICE YOUNG: That's what your rule says I think.

CHIEF JUSTICE TAYLOR: I'm not defending it or attacking it, I just want to know what it says. Isn't that what it says and that's what you're arguing here that you have that obligation? I'm not so sure that's a bad idea by the way, I think we don't want people to be real casual about admitting lawyers and not having gone through any of the vetting processes in Michigan so maybe that's not a bad idea, but I'd just like to find out if that's what we're talking about.

MS. KREMSKI: Not in terms of vicarious liability. If that's what you're talking about in terms of vicarious liability (inaudible) --

CHIEF JUSTICE TAYLOR: So only if I assist the Ohio lawyer in running with the minor's money.

JUSTICE YOUNG: What if he defaults?

MS. KREMSKI: Now if he defaults, if it's an act of negligence, because you are co-counsel, you've entered your appearance --

JUSTICE YOUNG: That's what you're saying when you move somebody pro hac vice you are co-counsel.

MS. KREMSKI: You are co-counsel.

JUSTICE YOUNG: Does the client have to – Does the client have to accept that?

MS. KREMSKI: Well, I would --

JUSTICE YOUNG: If I'm on the hook as a moving attorney and I am now on the hook for the liability for negligence, why would I do that if I'm not getting paid by the client?

MS. KREMSKI: Exactly, and that's why we put the language in the rule because we have so many attorneys who think that pro hac vice they're doing it pro forma -

JUSTICE YOUNG: But why – if you say this is commerce friendly, how can that be? I'm a client, I've got the attorney I want, why is it commerce friendly and why isn't it a contravention of my choice of attorney to have imposed on me a foreign attorney that I don't know and don't want.

MS. KREMSKI: These are competing interests, your honor, -

JUSTICE YOUNG: Okay.

MS. KREMSKI: and the rules attempt to balance that. There are I believe three or four states across the – in the union that do not require affiliation. Most of the rules do, and you – the exact argument that you identify which is why those states don't require affiliation. Most states believe that the public protection, and in protecting the client in the event that the out-of-state counsel should abandon litigation outweighs --

CHIEF JUSTICE TAYLOR: Ms. Kremski can I ask you about a much more usual case that might arise. The lawyer from Toledo who's representing someone from Toledo who gets pinched for drunk driving in say Monroe County. So now the lawyer from Ohio – this is the – the Ohio lawyer and the Ohio client

have an old relationship – the Ohio lawyer appears in the district court in Michigan. Now let me just see what I – just help me through this.

MS. KREMSKI: Okay.

CHIEF JUSTICE TAYLOR: So he then has to get a local Michigan lawyer to move his pro hac vice motion right.

MS. KREMSKI: Let me make sure I follow you. The Ohio attorney is --

CHIEF JUSTICE TAYLOR: In Michigan practicing in the district court. He's been selected by the Ohio client, it could me a Michigan client, but he's been selected by the Ohio client to be his lawyer.

MS. KREMSKI: Okay, in Michigan (inaudible) --

CHIEF JUSTICE TAYLOR: I would assume there's a good bit of this on the border. Okay. Now let's just see what we have here. So there has to be a local lawyer requested to move the Ohio lawyer's pro hac vice admission right?

MS. KREMSKI: Right.

CHIEF JUSTICE TAYLOR: Right. Okay, now what is the Michigan lawyer signing on for in that very usual situation?

MS. KREMSKI: He or she is entering their appearance as co-counsel of record on behalf of the client.

CHIEF JUSTICE TAYLOR: Okay, now if the Ohio lawyer malpractices, what happens to the Michigan lawyer?

MS. KREMSKI: That would be governed by the malpractice case law in terms of what sort of liability the Michigan attorney would have --

JUSTICE YOUNG: In affect he becomes a partner to the Ohio lawyer. If he's co-counsel --

CHIEF JUSTICE TAYLOR: In other words, what I think we're trying to get at here is there's not – this moving lawyer is not just a moving lawyer -

MS. KREMSKI: Right.

CHIEF JUSTICE TAYLOR: he is now on the case.

JUSTICE YOUNG: Co-counsel.

CHIEF JUSTICE TAYLOR: He's gonna wanna be repaid for that isn't he?

MS. KREMSKI: Yes, and that's why we put – we wanted to spell out the duties clearly in the proposed rule because those duties already exist -

CHIEF JUSTICE TAYLOR: Okay.

MS. KREMSKI: under the existing rule, but our attorneys don't know about them.

CHIEF JUSTICE TAYLOR: They're sort of out there in the ether – in the case law.

MS. KREMSKI: Right. And this way the Michigan lawyer --

JUSTICE YOUNG: Is there case law that says that when you move a foreign attorney you are co-counsel?

MS. KREMSKI: I'm not personally aware of that, I would assume there is. I can look into that and --

JUSTICE YOUNG: Not ethical opinions, but case law.

MS. KREMSKI: I would have to research that issue.

CHIEF JUSTICE TAYLOR: Okay, maybe you can get us some information on that.

MS. KREMSKI: Sure.

CHIEF JUSTICE TAYLOR: One final thing. Should this be in – It seems to me this most likely arises when the district judge in Monroe in our hypothetical turns to his court rules and looks up this thing and finds not a thing on it because it's in the State Bar rules which he might not ever think of. Shouldn't this be if not in the court rules cross-referenced in there or in some fashion to put the judge who's trying to handle this, and the lawyer too incidentally, the Michigan lawyer, so they know where to find this stuff?

MS. KREMSKI: Absolutely, we don't care where it goes. The reason we proposed it as a State Bar rule is because the existing rule is in the State Bar rule, that it's in the Character and Fitness rule. We get calls all the time at the Bar.

CHIEF JUSTICE TAYLOR: Yeah, I mean I think it's placed in a way that makes it really hard to fine.

JUSTICE CORRIGAN: As I understand your proposal as well, this could only occur three times. The Ohio lawyer Chief Justice Taylor's referring to could only represent three Ohio clients in southern Michigan – drunk driving cases correct? How's that consistent with welcoming multijurisdictional --

CHIEF JUSTICE TAYLOR: He has to join the Bar then doesn't he?

JUSTICE CORRIGAN: After three times you must join the Michigan Bar.

CHIEF JUSTICE TAYLOR: I think it's after one.

MS. KREMSKI: There is – after the rule was drafted we did realize that perhaps we ought to have – there ought to be an exception where – to give the trial court discretion that if it's going to be four appearances in 365 days that that might be a good thing if they can prove good cause. But the idea is there's a lot of concern that pro hac vice is being used as a method to get around filing for formal admission to the state.

JUSTICE CORRIGAN: Do you have records that establish this or is this speculation on your part?

MS. KREMSKI: That's the problem with the pro hac vice system is that --

JUSTICE CORRIGAN: You don't know.

MS. KREMSKI: no one knows what's going on.

JUSTICE CORRIGAN: But when you're proposing this what are you relying on by way of any evidence?

MS. KREMSKI: In terms of statistical evidence -

JUSTICE CORRIGAN: You don't have it.

MS. KREMSKI: there is very little. It's mostly anecdotal.

CHIEF JUSTICE TAYLOR: Maybe I can help in that. I was in – at a conference with other people involved in this process, and I was talking to the person from the Florida Bar who does this and they have a program fairly akin to this. And they were shocked at the number of people who were appearing pro hac vice in the Florida courts. They didn't have any idea either and then they started and they found there were quite a few. Can I ask you this? I thought that the rule was, maybe I just read this too quickly, I thought that the rule that you were proposing was a rule that said you come in X times, I thought it was one but I might be wrong, and then you would have to be – then you'd simply have to pay the same amount of money that a Michigan lawyer does. You don't have to go through the character and fitness process and all that kind of thing.

MS. KREMSKI: Right.

CHIEF JUSTICE TAYLOR: In what terms of the revenue implications of this – do you have any idea what they would be you should know?

MS. KREMSKI: I'm sorry the --

CHIEF JUSTICE TAYLOR: The revenue implications – how many people do you think - I mean how many – I don't have any idea how many people are coming across from Indiana, and Ohio, and maybe even from Wisconsin.

MS. KREMSKI: We don't know I mean because we have no idea of the scope and the nature in terms of what revenue we'll be taking in. We have spoken with the attorney regulatory agencies, the Attorney Grievance Commission and the Attorney Discipline Board, in terms of trying to determine what the impact will be financially. Clearly, the State Bar will have the initial impact because if it's passed – adopted as written, we'll have a --

CHIEF JUSTICE TAYLOR: Did I understand you to say that the rule as drafted will allow a judge to waive that – the paying of that fee?

MS. KREMSKI: Only in pro bono matters.

CHIEF JUSTICE TAYLOR: Only in pro bono okay.

JUSTICE MARKMAN: Ms. Kremski I have a much more pedestrian question. I've been increasingly concerned about the flood, the torrent of rules that the Court has been putting out in recent years. As a representative of the Bar are you at all concerned about this? Are you at all concerned about the fact that we have a one paragraph rule here that's been reasonably workable, replaced by

something that's about a hundred times longer? I mean does trend concern you as a representative of the Bar at all?

MS. KREMSKI: I can't speak on behalf of the Bar, the – I can give you my personal opinion, my personal experiences. The Representative Assembly has endorsed this. They're comfortable with the rule as it is. I can tell you as somebody who answers the ethics help line and receives calls, there are three of us who do that. We receive calls every month, at least three to four - each of us, from law firms out of state saying where's your rule, how do we do it. Some of them even think this rule has already passed and they're like where do I send my check and where is the form. I think that because we are – the current process isn't very detailed that the attorneys out of state are much more comfortable with more detail and the lack of detail in our current rule is actually frustrating to them. But I hear what you say generally because I am one that doesn't believe that you need more words to say something less, but in this case based on my personal experience on the regulatory end I think it's a good thing.

CHIEF JUSTICE TAYLOR: Any other questions? Thank you very much.

MS. KREMSKI: Thank you.

ITEM 3 – 2005-36 – MCR 7.204 and 7.205 – Time Limits in Appeals

CHIEF JUSTICE TAYLOR: 2005-36 Shawn McNally.

MR. McNALLY: Good morning Mr. Chief Justice and may it please the Court. Sean McNally appearing on behalf of the State Bar's Civil Procedure and Courts Committee in support of the proposed amendments to 7.204 and 7.205. The Committee has reviewed these; we have debated them, and we support both of the amendments with one small clarification to 7.205(a)(2). The concern that the Committee had with this proposed language is that the language presumes that all post-trial or post-order motions are timely if they're filed within the 21 day appeal period. MCR 2.119(f)(1) provides a 14-day period for a reconsideration or rehearing motion. Therefore, that time period doesn't work within this initial 21-day period. We have suggested the following language as alternative language that would make accommodations for this shorter period. And the language is as follows: "21 days after the entry of an order denying a timely motion for a new trial, rehearing, reconsideration, or other post judgment relief. For purposes of this subrule, a motion is timely if it is filed within the time allowed by law or rule, or within such further time allowed by the court within that period." This would not only accommodate the period that's established by 2.119(f)(1), but it would also

accommodate the judge's discretion to set deadlines within the scheduling order under 2.401. This conflict is already occurring with this 14-day period. The language that's proposed for 7.205(a)2) is identical to the language that currently exists in 7.204(a)(1)(b) having to do with claims of appeal. The Court of Appeals in a published decision this year in *In Re Smith Trust* encountered that conflict and resolved it by applying the 21-day period because it more specifically applied. That's how the courts –-

JUSTICE YOUNG: Are you suggesting in your – that a court on its own motion without being prompted by motions that have the 21-day period can extend the appellate period by order?

MR. McNALLY: Well, when you look at this Court's decision in *People v Grove* and also the Court of Appeals decision in *Kemerko Clawson* which is a 2005 published decision, it talks about a court's ability to control its case flow and the management of its cases through deadlines.

JUSTICE YOUNG: Yeah, but we're now talking about a concluded case, and theoretically the period for appeal begins to run. It sounded to me like you were suggesting without any of the motions that trigger a stay of that running the court can on its own motion, by scheduling order or otherwise, extend that appeal period or delay that appeal period. Is that what you're arguing?

MR. McNALLY: No, I'm not arguing that the --

JUSTICE YOUNG: I thought that's what you just said.

MR. McNALLY: No, it would be a situation where the court would possibly be able to shorten the period which a motion would be filed in that same 21 day appeal period. The primary concern was with the 14-day period provided for by 2.119. The conflict has existed in 7.204. The courts – the Court of Appeals at least resolved it in applying the longer period of time, and here when we're amending the language we thought it was appropriate to deal with that conflict with some proposed alternative language. I appreciate the Court's consideration. If there's no further questions, I thank the Court.

CHIEF JUSTICE TAYLOR: Thank you sir.

JUSTICE KELLY: Did you put that in writing for us?

MR. McNALLY: We did. It was submitted by the co-chairs of the Committees in a May 8th letter. Thank you.

JUSTICE KELLY: Okay, thank you.

CHIEF JUSTICE TAYLOR: Thank you. We'll now move on to 2006-03, the pretrial release matters. Andrew Richner.

ITEM 5 – 2006-03 – MCR 6.106 – Pretrial Release

MR. RICHNER: Good morning Chief Justice Taylor and fellow members of the Court. I'm joined by Ron Marsh. He was an attorney very experienced in the area of bail bonds law, and he will be following for comments.

CHIEF JUSTICE TAYLOR: All right.

MR. RICHNER: My name is Andrew Richner. I'm an attorney at Clark Hill, and I'm here on behalf of the Michigan Professional Bail Agents Association. We support the proposed amendments to Michigan Supreme Court Rule 6.106, to clarify that judgment may not be entered against sureties on bail bonds for failure of criminal defendants who comply with bond conditions other than the appearance of defendants. We believe that the proposed amendments to Rule 6.106 are necessary to protect criminal defendants' constitutional right to be released on bail. Defendants who might not otherwise have the means to post a bond in the amount that a court sets can often with the assistance of friends and family utilize the services of professional bail agents and sureties to do so at relatively low cost. In addition to allowing the defendants to exercise their constitution right for pretrial release, the use of bail agents and sureties help counties and local units of government better manage their detention resources and helps relieve jail overcrowding. Under long established law, bail is the means to insure the future attendance of criminal defendants in court. And if criminal defendants who have posted a bond in the bail amount fail to make a court appearance, a court can and should forfeit the surety bond. The court also has the authority to impose restrictive conditions upon the liberty of those accused, designed to insure good pretrial behavior. For example, curfews or prohibitions against the consumption of alcohol or drugs, as well as protective conditions intended to promote public safety. And I – The Crime Victims Rights Act is a good example under which a court may impose restrictions on contact with an alleged victim or entry onto a particular property. Yet these laws only allow courts to revoke bond for those unwilling to abide by the restrictive and protective conditions of bond. They do not authorize a forfeiture judgment to be entered against a surety. This has the affect of punishing by revocation of the release order the defendant for his or her conduct, but not punishing someone other than the defendant which is often in these cases a friend or family member as I mentioned since they do not authorize entry of a forfeiture judgment against the surety. Statutes clearly absolve the surety upon fulfillment of the surety's duty to

see that the defendant makes his or her date in court, including those instances where the defendant is brought in to answer to an alleged violation of a condition of his or her release. MCL 765.262 provides that upon delivery of his or her principal at the jail by the surety or his or her agent or any officer, the surety shall be released from the conditions of his or her recognizance. Other provisions such as MCL 765.28 and MCL 765.4 confirm that surrender of the defendant relieves the surety of all liability notwithstanding the defendant's failure to perform other conditions. Appellate courts in Michigan have read these statutes and followed these statutes releasing sureties upon appearance of the defendant. Court opinions in other states also acknowledge --

CHIEF JUSTICE TAYLOR: Thank you very much Mr. Richner, your time is up. Thank you.

MR. RICHNER: Okay.

CHIEF JUSTICE TAYLOR: Mr. Marsh.

MR. MARSH: Thank you Justice. Once again my name is Ron Marsh, I represent the Bondsmen for the state of Michigan. I have for about thirty years – I interacted with Commissioner Szermet (phonetic) in '92 when this Court rule was revised to a great extent. This subrule possibly is a bit ambiguous. The proposed revision of the subrule I believe clarifies and eliminates any ambiguity. 765.28 is a show cause hearing – a statute that provides for a show cause hearing. I've conducted many of them over the years. It's the vehicle through which the surety shows why judgment should not enter. It's based on failure of appearance consistent with the subrule appearance. The subrule places responsibility with the one person who can guarantee behavior of the criminal defendant. A surety can't guarantee the behavior of another human being, it creates an impossibility. When sureties are approved in the individual counties throughout the state of Michigan to MCL 750.167(b)(4) upon proper application has been defined as among other things sureties presenting a qualifying power of attorney from their insurance company which is for appearance only. When the surety posts the bond with an individual power of attorney, it's for appearance only. With the proposed revision, the surety continues to remain responsible for the appearance of the defendant, the defendant clearly under the proposed revision and it's not so clear under the present subrule as I see it. Under the proposed revision the defendant is clearly responsible for a violation of a condition including appearance, but also other than an appearance. It gives the authority to the judge to enter a judgment if a defendant has violated a condition. The word "may" continues to be used in the subrule so discretion should be applied whether it's an egregious or nonegregious violation of a condition. I believe that the proposed revision merely clarifies the

rule, and gives courts authority to enter judgment against a defendant who's violated a condition.

CHIEF JUSTICE TAYLOR: Thank you very much sir.

MR. MARSH: Thank you.

CHIEF JUSTICE TAYLOR: Item 6 – 2006-29 – Summary Judgments. Mr. McNally.

ITEM #6 – 2006-29 – MCR 3.411 - Judgments

R. McNALLY: Thank you again Chief Justice Taylor. I'm Sean McNally appearing again on behalf of the State Bar Civil Procedure and Courts Committee. We have reviewed this proposed amendment. It seems like a sensible change and we have voted to support it. If there's any questions, I'd be happy to answer them.

CHIEF JUSTICE TAYLOR: Thank you sir. Item #7 – 2006-33 – Summary Disposition. Again, Mr. McNally.

ITEM #7 – 2006-33 – MCR 2.116 - Summary Disposition

MR. McNALLY: Thank you. Sean McNally appearing on behalf of the State Bar Civil Procedure and Courts Committee. We have reviewed this proposed amendment to MCR 2.116 and generally support it with one clarifying amendment which was provided in a May 8th letter by our co-chairs. The item that we would suggest clarification to is 2.116(d)(4) concerning the time in which a motion filed under (C)(8), (C)(9), or (C)(10) would be filed. Looking at the language of the proposed amendment it seems that the intent behind this amendment is to bring the rule in line with decisions like *People v Grove* and *Kemerko Clawson* out of the Court of Appeals that the trial judge does have discretion to control case flow through a scheduling order entered under 2.401. What's a little bit problematic with the proposed language is that it seems that at the beginning it says the motion may be raised at any time. We provide this clarifying amendment and the language we believe should read: "The grounds listed in subrule (C)(8), (9), and (10) may be raised at any time, unless a period in which to file dispositive motions is established under a scheduling order entered pursuant to MCR 2.401." And then it goes on to talk about the trial court's discretion to allow a motion that's filed – or to allow a motion to be raised after that deadline passes. We believe that this amendment would simply clarify what we believe is the apparent intent behind the proposed amendment. I'd be happy to answer any questions by the Court.

CHIEF JUSTICE TAYLOR: Thank you sir.

MR. McNALLY: Thank you.

CHIEF JUSTICE TAYLOR: Item #9 – 2006-39 concerning Michigan Rule of Professional Conduct 1.10. Dr. Theodore Golden.

ITEM #9 – 2006-39 – MRPC 1.10

DR. GOLDEN: My name is Dr. Theodore Golden. I am a dermatologist practicing in Sterling Heights, Michigan. Today we are seeing democracy at work in changing the rules we live by in order to better our lives. Rule 1.1 of the Michigan Rules of Professional Conduct deals with conflicts of interest. I am here to tell the citizens of Michigan that they must get active in changing Michigan's master rules in order for the rules stipulated by the Michigan Supreme Court and the Michigan Rules of Professional Conduct to work. The Michigan Constitution does a great disservice to the citizens of Michigan by empowering the Michigan Supreme Court to protect the legal system and must be changed. The lack of enforcement of well established ethical standards for attorneys as specified in the Michigan Rules of Professional Conduct is one of the prime reasons the legal system in Michigan is not respected. A scandalous situation has existed in Michigan for many years because the Michigan Supreme Court has failed to adequately police and protect the integrity of our legal system. We have the fox guarding the hen house. Attorneys cannot police attorneys; it does not work due to conflicts of interest. The Michigan Constitution, the master rules, must be changed to eliminate the foremost conflict of interest in the state. I have proposed the Golden Legal Oversight Amendment. My constitutional amendment will establish a board elected by the citizens of Michigan to write the rules concerning the conduct of attorneys and judges and have the authority to police the legal system. Any citizen may run for the board. The citizens of Michigan must have direct control of these vital legal functions and not the Michigan Supreme Court. I refer you to my website TAGolden.com or MichiganJustice.com for details. I hope the members of this Court, the Governor, the legislative branches of government, and the legal profession will endorse the Golden Legal Oversight Amendment and expedite its passage. The citizens of Michigan deserve excellence, justice, and integrity of their legal system. Thank you.

CHIEF JUSTICE TAYLOR: Thank you sir. Any questions? Thank you. Terrance Bacon.

MR. BACON: Thank you. Terrance Bacon from Varnum, Riddering, Schmidt & Howlett. I want to thank you initially for the prompt action that the

Court did on this rule last fall when it was very necessary to have that immediate kind of action. I came here only to be able to give mainly responses if there were some other comments that deserved a response on these. We did file – I did file some final written comments with some minor additional changes that could be done to clarify a couple ambiguities in the rule. There are different ways of wording it and I would be content with the way the Supreme Court staff may wish to change those. A last comment on this rule is the importance of screening in Michigan is – I can't overemphasize that in terms of law firms, lawyer mobility, and client choice. Michigan is one of several jurisdictions in the United States that have approved screening since we follow the otherwise general approach of the ABA, and I think that we've shown in Michigan that screening does work. Through my experience I know that law firms pay attention and seek to strictly comply with screening and they trust other lawyers and law firms to do the same, and I have yet since the screening rules came in place ever seen a situation where really that trust was betrayed either inside – you know obviously my law firm, but others – and it is vital to the continued mobility of lawyers within Michigan that we recognize that. Thank you. I don't – you can cut me off if this isn't appropriate. I was only going to point out – I haven't come to these kinds of sessions very often. I find it very interesting on these rules, and I was just going to comment – I think you knew on the pro hac vice rule the existing rule does require association – the moving lawyer, that the lawyer that comes in has to be associated with – so you couldn't have the situation where someone just in the courtroom makes the motion for pro hac vice. That is the way you could do that – well, except for character and fitness. Federal courts don't need that. That is a little catch in Michigan's rules that catches people by surprise on pro hac vice when they come in from out of state or even lawyers in state realizing that because it's not found in the court rules, but only in the rules for the Bar. There may be an advantage of getting that at least somewhere or cross-referenced in the court rules because many people don't realize that when they come in.

CHIEF JUSTICE TAYLOR: Thank you Mr. Bacon we appreciate it. We'll stand in recess.